IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

ITA.No. 84 of 2000

ORDER DATED 29.2.2000 IN ITA.180/COCH/1996 OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
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APPELLANT/REVENUE:

THE COMMISSIONER OF INCOME-TAX,
COCHIN.

BY STANDING COUNSEL, GOVT. OF INDIA (TAXES)
SRI.P.K.R.MENON (SR.) &
SRI.GEORGE K. GEORGE

RESPONDENT/ASSESSEE:

M/S.PARRY AGRO INDUSTRIES LTD.,
WELLINGDON ISLAND, COCHIN.

BY ADV. SRI.ANIL D. NAIR

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

I.T.Appeal No.84 of 2000

Dated, this the 7th day of August, 2007

JUDGMENT

H.L.Dattu, C.J.

This appeal arises out of an order passed by the Income Tax Appellate Tribunal, Cochin Bench, Cochin in I.T.A.No.180 of 1996 for the assessment year 1992-93, dated 29th February, 2000.

(2) The assessee has raised the following questions of law for consideration and decision by this Court. They are as under:

> "1. A) Whether, on the facts and in the circumstances of the case the Tribunal is right in law in holding that for arriving at the written down value of the assets in the tea business, depreciation to the extent of 40% only was to be adjusted as the depreciation actually allowed?
>
> B) Whether, the Tribunal is factually right in upholding the contention that 'depreciation actually allowed was only 40%' and is not the finding wrong legally and factually?
>
> 2. A) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the profit derived from export is to be computed for the purpose of the relief u/s.80HHC in accordance with clause (a) of subsection (3) of Assam tea without taking into account the turnover of tea from other estates, provided the business there is exclusively of export of tea?
>
> B) Whether, on the facts and in the circumstances of the case and on an interpretation of section 80-HHC of the Income-tax Act, should not the Tribunal have taken the total turnover of the entire business including the Assam Tea Estate since as regards the tea business of Assam Tea Estate is concerned, the business as a whole in respect of all the estates has to be taken together and is not the direction to the Assessing Authority wrong and unwarranted?

(3) In so far as the first question of law is concerned, the same is covered against the assessee in view of the decision of this Court in the case of

Commissioner of Income Tax v. *Parry Agro Industries Ltd.* [(2006) 206 CTR (Ker.) 36]. In the said decision the Court has observed as under:

> "14. We may now extract question Nos.4(a) and (b).
>
> > "4(a) Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that for arriving at the WDV of the assets in the tea business, depreciation to the extent of 40 per cent only was to be adjusted as the depreciation actually allowed?
> >
> > 4(b) Whether, the Tribunal is factually right in upholding the contention that 'depreciation actually allowed was only 40 per cent' and is not the finding wrong legally and factually?"
>
> In view of the decision of this Court in C.W.S.(India) Ltd.'s case (supra), these questions have to be answered in favour of the Revenue. This Court in C.W.S. (India) Ltd.'s case (supra) held that after computing the total income, the same has to be bifurcated in the ratio of 60 : 40 and the total income would necessarily mean the net income and not gross income. The income from tea estate is computed applying ss. 28 to 43C, and when computing the income, depreciation of 100 per cent is allowed under s.32 though for the purpose of charging of income under IT Act, r.8 is applied and the income so computed is apportioned. The depreciation actually allowed against the assessee was not 40 per cent, but 100 per cent which is to be considered for the purpose of WDV. These questions are, therefore, answered in the negative in favour of the Revenue."

(4) In view of the above decision of this Court, the first question of law framed by the assessee is answered in favour of the Revenue and against the assessee.

(5) In so far as the second question of law is concerned, the same is also no more debatable in view of the orders passed by this Court in the aforesaid decision. In the said decision the Court has observed at paragraph 13 as under:

> "13. We find in the facts and circumstances of the case the Tribunal is right in holding that the profit derived from export is to be computed for the purpose of the relief under s.80HHC in accordance with cl. (a) of sub-s.(3) of Assam tea without taking into account the turnover of tea from other estates. Questions 2 and 3 are already covered by the judgment of this Court in I.T.Appeal No.103 of 1999 and I.T.Appeal No.115 of 1999 in favour of the Revenue in which the assessee itself was the party. We, therefore, follow those decisions and answer these two questions in favour of the Revenue."

(6) In view of the law declared by this Court, the second question of law is also answered in favour of the Revenue and against the assessee.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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